DOCUMENT RESUME

ED 376 659 EC 303 489

AUTHOR Rapp, JoAnn M.
TITLE The Federal Legislative Mandates of Services to the Special Needs Postsecondary Student and the Implications for Today's Professor.
PUB DATE Apr 94
NOTE 26p.; Paper presented at the Annual Meeting of the American Educational Research Association (New Orleans, LA, April 4-8, 1994).
PUB TYPE Information Analyses (070)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Civil Rights Legislation; College Faculty; *Compliance (Legal); *Court Litigation; Educational Legislation; Elementary Secondary Education; *Equal Education; *Federal Legislation; *Higher Education; *Special Needs Students; Trend Analysis

ABSTRACT

This paper reviews the past 30 years of federal legislation and case law regarding services for postsecondary students with special needs. It focuses upon the interpretation of law, implementation of regulations, and academic standards surrounding the fulfillment of both the letter and spirit of the law. The first section discusses early special education law or litigation, including the Elementary and Secondary Education Act (1965), the 1972 case of Pennsylvania Association for the Retarded versus Commonwealth of Pennsylvania, the 1972 case of Mills versus Board of Education of the District of Columbia, and Public Law 94-142 (the Education for All Handicapped Children Act) in 1975, now reauthorized as the Individuals with Disabilities Education Act. The second section reviews federal special education legislation impacting institutions of higher education, specifically Public Law 93-112 (the Rehabilitation Act of 1973), regulations for Section 504 of this Act, the 1979 case of Southeastern Community College versus Davis (which established the concept of acceptable exclusion), the 1974 Family Educational Rights and Privacy Act (the Buckley Amendment), the Education Amendments of 1983 and 1986, and the 1990 Americans with Disabilities Act. Major requirements of these laws for institutions of postsecondary education and the individual professor are summarized. It is stressed that reasonable accommodation to "otherwise qualified" students should not mean lowered standards or unfair advantages for these students. (Contains 19 references.) (DB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

THE FEDERAL LEGISLATIVE MANDATES OF SERVICES TO THE SPECIAL NEEDS POSTSECONDARY STUDENT AND THE IMPLICATIONS FOR TODAY'S PROFESSOR

ED 376 659

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

JoAnn M. Rapp

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

JoAnn M. Rapp, Ph.D.

Loyola University of Chicago

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- ☑ This document has been reproduced as received from the person or organization originating it.
- ☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Given thirty years of federal legislation and case law that have expanded the educational opportunities of the special needs student at the elementary and secondary school level, institutions of higher learning today must address the implications of the legal mandates impacting the classroom setting and total university context of the college-bound, specially challenged individual. The Rehabilitation Act of 1973, the Family Educational Rights and Privacy Act of 1974, the Education of the Handicapped Amendments of 1983 and 1986, and the Americans with Disabilities Act of 1990 all define the nature of the extension of protected rights to the individual with disabilities in the postsecondary setting. Administrative policy at the local institution sets the context within which the professor will provide the accommodation to the student. This paper focuses upon the interpretation of law, implementation of regulations, and academic standards surrounding the fulfillment of the letter of the law as well as the spirit of the law.

Early Special Education Law

When Congress passed the Elementary and Secondary Education Act (ESEA) in 1965, it laid the cornerstone for future federal responses in the area of special education. This monumentally important legislation established the nationwide policy of

EC 303455

BEST COPY AVAILABLE

intervening on behalf of the public education of the handicapped as well as the culturally deprived. It called for the first general aid to improve the education of specific populations.

The federal judicial system's precedent-setting decisions of the early 1970s paved the way for expanded congressional protection of equal educational opportunity for all handicapped youngsters. In the 1972 case of Pennsylvania Association for the Retarded v. Commonwealth of Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972), the federal district court ruled that retarded students could not be excluded from public school. The judges established a well defined due process procedure for initial placement and for changing a child's special education program. Those children, henceforth, were to have access to a public school education. In that same year in Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D. D.C. 1972), the federal district court ruled that funds, even if inadequate to educate the regular child, must nevertheless be allocated equally for all and that no child should be completely excluded from attending.

Those two rulings helped foster the belief nationally that due process and equal protection of the law afforded by the Fourteenth Amendment of the U.S. Constitution protected the right of the handicapped child to have not simply access to public education, but more specifically a free and appropriate education in the public school setting.

The tone of the judicial system rang clear for expanding the

educational opportunity of the handicapped. Citizens' pressure made itself felt on the state level especially between the years 1970 and 1975. State legislatures began to busy themselves enacting laws guaranteeing special education. By 1972, almost 70 percent of the states had put laws on the books designed to insure the education of the handicapped student. By 1975 only two states had not adopted some type of legislation mandating public education for that special population.[1]

Congress firmed up the foundation of the newly expanded services to the handicapped by mandating uniform services nationwide. On 29 November 1975, President Gerald Ford signed Public Law 94-142, The Education for All Handicapped Children Act, the long awaited national landmark of educational rights for youngsters with disabilities. In its opening declaration, Congress reported persuasively its findings:

> (1) More than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity; (2) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers. . . ; (3) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense. . . ; (4) it is in the national interest that the Federal government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to

---

[1]Joseph Ballard, Bruce A. Ramirez, and Frederick Weintraub, ed., Special Education in America: Its Legal and Governmental Foundations (Reston: Council for Exceptional Children, 1982), 3.

assure equal protection of the law.[2]

The law mandated a free, appropriate education in the least restrictive environment. Procedural safeguards called for unbiased testing, placement, and a continuum of services based on the child's unique needs as described in the individual educational plan.

This law remains today the backbone of federal statutes governing special education. It has been codified in the Individuals with Disabilities Education Act (IDEA) as of 1988 with subsequent amendments in 1990 and 1991. Individualized accommodation and accountability by the public school have become the major concern of the public school administrator and the special education teacher nationwide.

Federal Special Education Legislation Impacting the Institutions of Higher Learning

On 23 September 1973, Congress enacted Public Law 93-112, the Rehabilitation Act of 1973, with the intent of ending some of the barriers faced by handicapped adults. Specifically the statute awarded grants to states for vocational rehabilitation services with special emphasis on assisting the most severely disabled. The last paragraph of the thirty-eight page document encapsulated the most significant words ultimately affecting delivery of special services at the postsecondary level. Section 504 in one short

---

[2]Education for All Handicapped Children Act, U.S. Statutes at Large, 89, sec. 3, (1975) , 774.

sentence laid the framework for dramatic changes by stating that

> no otherwise qualified handicapped individual. . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[3]

Time brought clarity to definitions contained within the statute. The act as amended on 7 December 1974 in section (7)6 redefined the targeted population by stating that "handicapped person" means any person who has a physical or mental impairment which substantially limits one or more of his/her major life activities, has a record of such an impairment, or is regarded as having such a condition. The Department of Education's 1980 addition of Section 504 regulations provided very important clarification of terms and procedures impacting the postsecondary institution. Those stood until the 1988 revisions to the Code of Federal Regulations which remain in effect.

Title 34, Chapter I, Section 104.3 of the 1988 Code reported on five important new terms: (1) A "qualified" handicapped person in regard to postsecondary and vocational education services is a handicapped person who meets the academic and technical standards necessary for admission or participation in his/her educational program or activities. (2) "A major life activity" includes learning and working. (3) A "recipient" is any public or private agency, person, institution, or organization receiving federal

---

[3]Rehabilitation Act of 1973, U.S. Statutes at Large, 87, sec. 504, 394, (1973).

assistance under the statute. (4) "Technical standards" refer to "all non-academic admissions criteria that are essential to participation in the program in question."[4] (5) "Federal financial assistance" means any grant, loan, contract, or method by which the Department of Education makes available its money to the recipient.

Since federal monetary aid could include veterans' education benefits and financial aid programs such as the Basic and Supplemental Educational Opportunity Grant, Guaranteed Student Loan and Pell Grant, it is highly unlikely that any college or university could successfully argue that it is not covered by Section 504 of the Rehabilitation Act of 1973. In the year 1990-91 public institutions of higher learning received 10.3 percent of their revenue from the federal government; private institutions received 15.4 percent of their dollars from Washington, D.C.[5] Of all postsecondary institutions serving full-time undergraduates in the fall 1989, 41.9 percent of the students received some type of federal aid. Grant money benefited 29.6 percent of those students and 28.3 percent received federal loans. An additional 12.5 percent of all part-time undergraduates received federal aid. Of the part-timers, 9.5 percent received federal grants and 6.0 percent received federal loans.[6] For the full-time college attender, the

---

[4]Appendix A: Analysis of Final Regulations, U.S. Code of Federal Regulations, vol. 34, subpart G, 485 (1988).

[5]National Center for Education Statistics, Digest of Education Statistics 1993 (Washington, D.C.: U.S. Department of Education, 1993), 171.

[6]Ibid., 314.

Pell Grant and Stafford Loan provided the biggest source of money. Almost 72 percent benefited from Pell dollars and 24.8 percent tapped the Stafford allocations. Part-time students (12.3 percent) most used Pell Grant monies.[7] Clearly, the very long purse strings of federal agencies provide the power base for strong input as to implementation of federal policy at the postsecondary level.

Seven passages of the 1988 regulations delineate detailed requirements for nondiscrimination in recruitment, admission, and treatment of students after admission to any institution's programs and activities. First of all, a qualified handicapped person cannot be denied admission solely on the basis of the handicap and cannot be subjected to discrimination in respect to recruitment or admission. A college cannot set limits as to the number of handicapped that will be admitted. An institution is forbidden from using any admissions test that places any adverse effect upon the handicapped individual. Any examination administered must be selected because it is designed to yield an accurate measure of the applicant's true ability or achievement level. Thus, the goal becomes the elimination of any unfair distortion of the student's ability due to the impact of his/her handicaps upon test taking. A college cannot inquire during the pre-admission as to whether or not an applicant is handicapped. After admission, the school may inquire, but it cannot require disclosure. The school may inquire <u>before</u> <u>enrollment</u>, however, so as to prepare for the needed

---

[7]Ibid., 315.

accommodations.

Second, a postsecondary institution may not exclude any qualified person merely on the basis of the existence of a handicap. This provision attempts to eliminate the practice of excluding a student with ambulatory limitations or the assumption that no job would be available after completing a course of study.[8]

Third, the school of higher education is required to operate its programs and activities in the most integrated setting possible. A college, therefore, must try not to schedule or arrange to have all the handicapped students in one particular class or section of the building.

Next, the postsecondary institution is mandated to modify academic requirements and practices that discriminate or carry the effect of discriminating against the individual. Most importantly, this provision does not obligate the school to waive a course requirement or any other academic requirement, but the institution must adjust the requirements to meet the needs of the individual. For instance, the school could decide to allow a deaf student to take a course in music history in lieu of a course in music appreciation. It is crucial to note that this regulation does not force the institution to modify academic requirements essential to the given program of instruction or a particular degree.

---

[8]Appendix A: Analysis of Final Regulations, 496.

The case of Southeastern Community College v. Davis, 442 U.S. 397, highlights this latter point. In interpreting the Rehabilitation Act of 1973, the 1979 U.S. Supreme Court found that the prohibition of discrimination against an otherwise qualified handicapped person in a federally assisted program did not compel the college to take affirmative action that would disregard the plaintiff's severe hearing impairment. The student needed effective oral communication skills in order to function in the school's clinical nursing program. Modifying the nursing program, by providing a sign language interpreter for the student, constituted a substantial change in the school's program. Therefore, not providing such a modification was not discriminatory under Section 504, so said the court. The college could and did deny the hearing impaired applicant admission to the registered nursing program on the basis of the applicant's inability to participate safely in the clinical training.

The Davis case helped establish the concept of acceptable exclusion by affirming that a handicapped student could indeed be denied admission to a school activity or program without the school being found in violation of Section 504. The school had only to base its determination of essential requirements on sound reasons such as health or safety concerns inherent in the nature of the program.[9] Of course, each case must be adjudicated on its own merits. The scope of the terms "essential requirements" and

---

[9]Southeastern Community College v. Davis, Supreme Court Reporter, vol. 99A, 2361-2371, (1982).

"otherwise qualified handicapped individual" are open to judicial interpretation based on the facts of a given case.

Fifth, a school becomes obligated to ensure that no handicapped student is subjected to exclusion from any program as a result of the non-availability of necessary auxiliary educational aids. The meaning of this regulation does not require the institution to purchase all the necessary auxiliary aids nor does it require that those aids be on hand at all times. Such devices could be made available through a state vocational rehabilitation agency or private organization. The scheduling of usage of those devices can be flexible. For example, a student with dyslexia, an impairment in decoding and comprehending printed language symbols, may be provided with taped textbooks from an outside source, or the college could have student volunteers as readers available in the library during fixed hours that allow for sufficient support. If the student were unable to take lecture notes due to his/her cerebral palsy, that student could use a tape recorder to acquire the lecture material.

Sixth, the institution is required to provide for fair test conditions so that the student may demonstrate his/her degree of mastery of the material. For instance, a dyslexic student may be entitled to an orally administered test if he/she cannot read the printed examination or the use of a recorder for his/her oral responses if the individual were unable to communicate through the written word.

Finally, the college is forbidden to deny a qualified handicapped person the opportunity to participate in or benefit from any aid or service and that aid or service must be equally as effective as that afforded the non-handicapped student. This, however, does not mean that to be equally effective that service, aid, or benefit must produce the identical outcome or level of achievement for the handicapped and non-handicapped person alike. Simply, the aid or service has to afford the handicapped person "an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs."[10]

The institution of higher learning indeed must tap the expertise of legal counsel to make the necessary distinctions between lawful refusal to extend affirmative action and illegal discrimination against the student who has special needs. Congress's intent certainly was not to allow the special needs individual access to all programs or activities merely because of a handicapping condition. Fulfilling the letter of the law may ensnarl many an institution in expensive legal webs. Implementing the mandates means potentially big fiscal dollars channeled into support services for a relatively small percentage of attending students while treasuries shrink to fund regular college programs.

On 21 August 1974, Congress enacted the Family Educational

---

[10]U.S. Code of Federal Regulations, vol. 34, sec.104.42, (1988).

Rights and Privacy Act, more commonly known as the Buckley Amendment. The scope of the statute encompassed all levels of education. The portion applicable to the postsecondary institution provides to the student age eighteen or older or those enrolled in an institution of higher learning the right to inspect and review his/her educational records as well as to prevent disclosure of records. The statutory language and regulations set minimum guidelines within which each institution must operate and then that school must establish its own policy for statutory compliance. Failure to comply could result in the loss of federal funds made available under any program administered by the Secretary of Education through a cooperative agreement, grant, or contract. This interpretation includes a student receiving, for example, a Pell Grant or Guaranteed Student Loan. Most importantly, the statute applies to any public or private educational agency or institution.[11]

What are educational records and how comprehensive is the right to review records and to withhold public disclosure of information? The Department of Education regulations as reported in Title 34, Subtitle A, Part 99.3 of the 1988 Code of Federal Regulations defines an educational record as that information directly related to the student and maintained by the institution. By that broad wording certainly the school would be saving every piece of paper ever processed on each and every student. More

---

[11]U.S. Code of Federal Regulations, vol. 34, sec.99.1 (1988).

revealing is the exclusionary clause that indicates in part that an educational record does not include: (1) records of instructional, supervisory, and administrative personnel that are kept solely in the possession of the record maker and not shared with any other person other than a temporary substitute; (2) law enforcement records of the school maintained separately from the educational records and used solely by the law enforcement unit of the school; (3) records of a student attending a postsecondary institution made or maintained by a physician, psychiatrist, psychologist, or other recognized professional who acts in his or her professional capacity or any records maintained as a result of that student's treatment by one of those professionals; (4) records on an individual employed by the educational institution; and (5) records on an individual after he or she no longer attends the school.

Section 99.12 delineates three important limitations upon access to one's own records if the institution so chooses to set limits. It can deny access to: (1) the financial records of the parents; (2) confidential letters and confidential statements of recommendations placed in a student's records after 1 January 1975 if that student waived his/her right to inspect those documents and those documents are related to admission, employment, or honorary recognition; or (3) the confidential letters or statements of recommendation are provided on the basis of assured confidentiality to be used only for the purpose intended.

The institution's discretionary power to control access is

greatly outweighed by the student's means to protect himself or herself, given the school's choice of limiting access to records. For instance, even if the individual has waived his or her right to review records, the institution is mandated to secure a written waiver regardless of the age of the postsecondary student. The institution is prohibited from using the signed waiver as a condition for admission or for receiving any service or benefit from the school. Also, the student has the right to revoke, through written request, the waiver. But then that individual can review only those records placed in the file after the date of the signed revocation. If the student believes that any information in the record is inaccurate, misleading, or in violation of his/her right to privacy, that person may ask the school to amend the record. If the school decides not to change the records, the action could trigger the student's right to have a hearing under due process.

Furthermore, the institution cannot release any personally identifiable information unless it secures written consent, states the purpose for releasing such information, and indicates the person to whom the information is to be released. Only under special circumstances may the school release information without written consent. (1) The school may release student records to other school personnel within the same institution who has legitimate educational interests. (2) The information may be sent to other postsecondary institutions where the student intends to enroll. (3) The school may release information defined as directory information if the student is notified in advance of the release.

An institution usually defines this as name and address, date of graduation, and degree earned.

In short, this law protects the student's option to review all individual records maintained by the educational unit unless a specific exception applies to the case. College and university administrators need to keep departments, program directors, and staff apprised of Buckley Amendment requirements and institutional policy regarding directory information versus that which must be withheld. For example, the college professor who has filed a letter of recommendation for an applicant needs to know that that information is provided at his/her own legal risk.

Overall, Congress wrote the Family Educational Rights and Privacy Act to protect the anonymity of the handicapped student from institutional abuses. That individual student may or may not invoke the protection of that law. To seek anonymity or to withhold pertinent information regarding the nature and degree of a handicapping condition may well result in no support service or less than adequate support services in the educational setting.

The Education Amendments of 1983 and 1986, modifications of the Education of the Handicapped Act (EHA) or P.L. 91-230 of 1970, brought new attention to the role of the postsecondary institutions in developing services to the special needs college student. P.L. 91-230 intended to provide grants for children with disabilities. The EHA Amendments of 1983 stated that the Secretary of

Education was "authorized" to make grants to state educational agencies, community colleges, or universities that designed model programs of postsecondary, vocational, technical, or adult education for the handicapped individual. In the 1986 EHA Amendments, Congress diminished it commitment by stating that the Secretary of Education "may make" grants to postsecondary units. Clearly, however, the national legislature saw the need to promote services to handicapped students who had moved beyond the protection afforded elementary and high school age individuals.

On 26 July 1990, George Bush signed into law The Americans with Disabilities Act of 1990 (ADA), P.L. 101-336, 104 Stat. 327 (1990). It vastly expands the protection against discrimination based on disability. This historic law imposes a duty on almost all private business enterprises and public sectors to bring individuals with disabilities into the economic and social mainstream. It provides enforceable standards under the power of the federal government. To guarantee commercial and civil rights, Congress requires changes in the area of employment in both the public and private sectors, the activities of state and local governments, the policies and practices of public and private transportation providers, and the modification of public and private accommodations to allow for accessibility of facilities, and the availability of telecommunication services for individuals

with hearing and speech impairments.[12]

Section 2 (a)(1) and Section 2(a)(6) respectively state that "43,000,000 Americans have one or more physical or mental disabilities and this number is increasing. . . ; individuals with disabilities are severely disadvantaged socially, vocationally, economically, and educationally." [13] In Section 3(2), an individual with a disability is that person who has "a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or is regarded as having such an impairment."[14] Few, if any, could not fall under the jurisdiction of such an umbrella definition.

Although most of ADA provisions affect the disabled person facing discrimination in employment and accessibility of facilities, one point directly mandates what the postsecondary administrator and instructor must do in regard to test and course modifications. Section 309 states that

> any person that offers examinations or courses related to licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative

---

[12]Elena Linthicum, Jack T. Cole, and Bruno J. D'Alonzo; ADA Handbook: A Guide to the Americans with Disabilities Act (Dubuque: Kendall/Hunt Publishing Co., 1992), 1.

[13]Ibid., 1.

[14]Ibid., 3.

accessible arrangements for such individuals.[15]

A state often requires possession of a license issued by an authority before an individual may practice a profession or trade. Thus, this subpoint assures that an individual with special needs is not foreclosed from educational, professional or trade opportunities because a test or course is conducted in an inaccessible site or without an accommodation. If an alternate site must be offered, that site must provide comparable conditions to those provide to the non-handicapped. Indeed, colleges and universities are modifying their physical plants to provide for accessibility. Provision must be made for any on site proctoring of the ACT, SAT, GRE or LSAT, for example.

What are the College Professor's Responsibilities in the Face of Extensive Legal Mandates?

Given Congress's concern and the all-encompassing, all inclusive definition of a disabled person covered by the terms of ADA, and society's legal obligations to citizens with disabilities, the following statistics pull into perspective the impact of the sum total of thirty-plus years of legislative protection of the educational opportunities of the special needs population: (1) The percentage of first-time, full time college freshmen reporting disabilities has increased considerably since the 1970s. In 1991, 8.8 percent of all freshmen reported having some type of a handicap, compared with only 2.6 percent in 1978. (2) Freshmen

---

[15]Americans with Disabilities Act in The Americans with Disabilities Act Handbook, Maureen Harrison and Steve Gilbert, eds. (Beverley Hills: Excellent Books, 1992), 195-196.

reported having a visual impairment and learning disabilities most frequently in almost equal numbers in 1991. (3) Freshmen reporting disabilities expected to take additional time to complete their degrees and were more likely to have selected a college based on its special program offerings to meet their unique needs. (4) Freshmen with learning disabilities tended to enroll in two-year schools (59 percent) while another 40 percent enrolled at universities and four-year colleges. (5) For the most part, disabled and non-disabled students expressed similar expectations regarding majors. Students with disabilities, however, reported a greater interest in technical fields and less interest in business fields than non-disabled students.[16]

In addition, the Individuals with Disabilities Education Act (IDEA) which took effect in 1990 as an amendment to P.L. 94-142, calls for a delineated transition plan for each special education student as he/she moves from high school into postsecondary education or employment. Where appropriate, the individual educational plan must contain a statement of interagency responsibilities or linkages before the student leaves the high school setting.[17] The requirement of transition plans encourages and fosters movement into a postsecondary setting conducive to the person's learning

---

[16]National Clearinghouse on Postsecondary Education for Individuals with Disabilities, Information from HEATH, 12 (Washington, D.C.: U.S. Department of Education, 1993), 4.

[17]Council for Exceptional Children, The Individuals with Disabilities Education Act (IDEA), ERIC Series in Legal Foundations, 2 (Winter 1992): 5.

needs. The existence of that transition vehicle coupled with the greater number of students with disabilities who are more willing to identify themselves in freshman year of college should serve as a red flag to the institutions of higher learning. They must be ready to make reasonable accommodations for student clients who perhaps have benefited from twelve years of mandated support services and are well versed as to their rights by the time they enter college. The wide range of special needs those matriculants bring to the college campus poses administrative, legal, ethical, and instructional questions with which those institutions perhaps previosusly have not had to deal. The added pressure of possible loss of federal funds will create an adherence to the letter of the law but will perhaps detract from an atmosphere conducive to the spirit of the law. Compliance under fear of loss of much needed dollars does not always engender enlightened, philosophically committed implementation.

The university and college face the same fiscal constraints and worries about "red ink" as the federal government budget makers. President Clinton's 1994 request of $5.5 billion for special education and rehabilitative services was pared down by $85 million.[18] The college must stretch its dollars in a tight, unpredictable economy. Trend data reveal some increases in expenditures per student. After adjustment for inflation, current expenditures per student rose about 17 percent between 1980-81 and

---

[18]Lee Foley, "Washington Update," in LDA Newsbriefs, vol. 28, no.5 (Pittsburgh: Learning Disabilities Association, 1993), 5.

1990-91.[19] Administrative expenditures, defined as institutional support and academic support but discounting libraries, have risen faster than other types of college expenditures. At public universities between 1980-81 and 1990-91 with inflation adjusted, the dollars expended for the full-time student rose 26 percent compared with 12 percent for instructional expenditures per student. At private universities during the same years, the per student administrative costs rose 45 percent while instructional costs went up 38 percent.[20] How the local institution's administration will opt to attempt to fund support services for the academically capable individual with disabilities is a unique issue to be addressed by each college and university. The requirement of accommodation and modification is clear, however.

Creative planning may provide workable answers. The college could impose a supplementary tuition charge for those tapping the specially designed support services. Adaptive computer equipment, telecommunication devices, notetakers, transcribers, readers, and program directors can be an expenditure least favored in these days of dwindling revenues, rising costs, and increased expectations of fiscal responsibility. Given the concern for maintaining enrollment figures, college administration might find it revenue enhancing to implement or expand existing support services. Data indicate that the students with disabilities tend to enroll at postsecondary

---

[19]Digest of Educational Statistics 1993, 167.

[20]Ibid., 167.

facilities which have in place support services to meet their needs.

For the college professor who has a special needs student in class for the first time, hopefully there exists an office specially designated to field the requests for classroom support services and a compliance officer to whom to address questions of university policy. Those should be the first line of information. If those support vehicles are not in place, perhaps the dean of student affairs or the personnel office may have information about student requests for accommodations. The student with disabilities may or may not already be known to existing college resource people. If the individual has not disclosed his/her special needs before the first day of class, the professor is clearly at a disadvantage. The student with special needs may very well ask for any of the following: (1) relocation of the class in an area more readily accessible to the wheelchair; (2) a notetaker; (3) the lecturer's use of an amplifying device; (4) the use of a tape recorder close to the lectern; or (5) extended test time or an alternate mode of demonstration of mastery of material. Before the term opens, a student may approach the instructor for a course syllabus so as to have sufficient lead time to secure required texts in braille or on tape. The accommodation is based strictly on what is appropriate to the individual's needs and what is a reasonable modification. The college department, with university counsel perhaps, must decide what does or does not constitute necessary affirmative action. Yes, academic standards must be

maintained. Reasonable accommodation to "otherwise qualified" clients should not be equated to lowered standards or unfair advantage to those benefiting from mandated accommodation. The mandates call for equal opportunity, not equal outcome or double standards of performance.

The letter of the law is more easily implemented than the spirit of the law. The stereotype that "special education" students are less than capable and competent must be dispelled. When society as a whole begins to accept individuals with disabilities as just that--individuals, first and foremost, with the same range of capabilities and potential as that reflected in the general population--the spirit of the law will be given life.

BIBLIOGRAPHY

Books

Ballard, Joseph, Bruce A. Ramirez, and Frederick Weintraub, eds. Special Education in America: Its Legal and Governmental Foundations. Reston: Council for Exceptional Children, 1982.

Fischer, Louis, David Schimmel, and Cynthia Kelly. Teachers and the Law. New York: Longman, Inc., 1981.

Harrison, Maureen and Steve Gilbert, eds. Americans with Disabilities Act Handbook. Beverly Hills: Excellent Books, 1992.

Linthicum, Elena, Jack T. Cole, and Bruno J. D'Alonzo. ADA Handbook: A Guide to the Americans with Disabilities Act. Dubuque: Kendall/Hunt Publishing Co., 1992.

National Center for Education Statistics. Digest of Education Statistics 1993. Washington, D.C.: U.S. Department of Education, 1993.

Federal Documents

Education of the Handicapped Amendments of 1983. U.S. Statutes at Large. Vol. 97 (1983).

Education of the Handicapped Amendments of 1986. U.S. Statutes at Large. Vol. 100 (1986).

Family Educational Rights and Privacy Act of 1974. U.S. Code Annotated. Vol. 20, Sec. 1232g (1978).

Mills v. Board of Education of the District of Columbia (F. Supp. 279).

"Part 99-Family Educational Right and Privacy." U.S. Code of Federal Regulations. Vol. 34, Subtitle A, 417-29 (1988).

"Part 104-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance." U.S. Code of Federal Regulations. Vol. 34, Chapter 1, 466-99 (1988).

Pennsylvania Association for the retarded v. Commonwealth of Pennsylvania. (334 F. Supp. 278).

Rehabilitation Act of 1973. U.S. Statutes at Large. Vol. 87 (1973).

Rehabilitation Act Amendments of 1974. U.S. Statutes at Large. Vol. 88 (1974).

Southeastern Community College v. Davis (442 U.S. 397).

Periodicals

Council for Exceptional Children. The Individuals with Disabilities Educational Act (IDEA). ERIC Series in Legal Foundations, 2 (Winter 1992).

Council for Exceptional Children. Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. ERIC Series in Legal Foundations, 1 (Fall 1992).

Foley, Lee. "Washington Update." In LDA Newsbriefs, vol. 28, no. 5. Pittsburgh: Learning Disabilities Association, 1993.

National Clearninghouse on Postsecondary Education for Individuals with Disabilities. Information from HEATH. 12 (June/July 1993).